

Final

**RHODE ISLAND SUPREME COURT  
ETHICS ADVISORY PANEL  
Opinion No. 97-22, Request No. 731  
Issued November 13, 1997**

**Facts:**

A client of the inquiring attorney obtained a judgment against Attorney A. During judgment collection proceedings, Attorney A was enjoined from alienating, concealing, or encumbering any nonexempt property in his/her possession pending a hearing. Pursuant to a court order, Attorney A produced at the hearing records of his/her client's trust account. The inquiring attorney states that those records indicated that Attorney A wrote out "dozens of checks" drawn upon the trust account for personal expenditures of Attorney A and his/her associates while the order freezing his/her assets was in effect. The inquiring attorney further states that the money spent did not belong to clients, and speculates that Attorney A either spent money that had been earned as a fee, or deposited additional money into the clients' trust account that had never belonged to Attorney A's clients.

**Issue Presented:**

The inquiring attorney asks whether he/she has an obligation under Rule 8.3(a) to report Attorney A's conduct to Disciplinary Counsel for Attorney A's possible violation of Rule 1.15 which requires a lawyer to keep clients' funds separate from the lawyer's own funds.

**Opinion:**

If the inquiring attorney has knowledge that another attorney has committed a rule violation that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer, then he/she must report the attorney to Disciplinary Counsel.

**Reasoning:**

Rule 8.3(a) entitled "Reporting Professional Misconduct" states:

- (a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

Rule 8.4 entitled "Misconduct" provides in pertinent part:

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

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For purposes of Rule 8.3(a), the determination as to whether another attorney has committed a violation of the Rules which raises a substantial question about that attorney's honesty, trustworthiness, or fitness to practice law is one which involves determinations of credibility that are largely subjective. See R. I. Sup. Ct. Ethics Advisory Panel No. 95-43 (1995). Such a determination is one to be made by the attorney who witnesses such conduct and not by the Panel. Accordingly, if the inquiring attorney has knowledge that Attorney A has committed a rule violation that raises a substantial question as to the other attorney's honesty, trustworthiness, or fitness as a lawyer, then he/she must report the attorney to Disciplinary Counsel.